



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,978	07/02/2001	Fred A. Bower III	BEA920010009US1	9953
49056	7590	03/05/2007	EXAMINER	
LIEBERMAN & BRANDSDORFER, LLC			VO, LILIAN	
802 STILL CREEK LANE			ART UNIT	PAPER NUMBER
GAIITHERSBURG, MD 20878			2195	
			MAIL DATE	DELIVERY MODE
			03/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/898,978	BOWER, FRED A.	
	Examiner	Art Unit	
	Lilian Vo	2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires _____ months from the mailing date of the final rejection.

b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) They raise new issues that would require further consideration and/or search (see NOTE below);

(b) They raise the issue of new matter (see NOTE below);

(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): 112 rejection.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1 - 24.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) WENGB-ALT. AN

13. Other: _____.

Lilian Vo
SUPERVISORY PATENT EXAMINER
2195

Lilian Vo
Examiner
Art Unit: 2195

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for the reasons set forth below.

1. With respect to applicant's remarks that "the examiner's evaluation of the prior art references in view of applicant's claimed invention does not elicit any motivation or suggestion to combine Moore et al., Logue et al., and AAPA..." (Page 3 4th paragraph), the examiner disagrees.

First, Applicant argues Logue does not teach or suggest operating in system firmware and that "...the administrator of Applicant is not equivalent to the administrator of Logue et al...." (page 3 last paragraph) and that "there is no association between the administrator of Logue et al. and the administrator claimed by applicant" (page 4 1st paragraph), the examiner disagrees. As admitted by applicant (page 4 1st paragraph) that administrator may include entities such as ...other device configured to receive statistical data..." Therefore, a device can be qualified as a firmware because it is well known in the art that a device can include a ROM with embedded instructions for operating. Furthermore, Logue also discloses that the administrator is sending the message or the receiving of the message is from the remote administrator (col. 6 lines 15 - 17) which is clearly read on the plain language of the claims. If applicant believes these citations do not disclose such teaching or provide proper meaning of the claimed invention, applicant must provide a clear definition and the location of these limitations in the specification.

As noted by the Court of Customs and Patent Appeals, "argument cannot take the place of evidence." In re Langer, 503 F.2d 1380, 1395, 183 USPQ 288, 299 (CCPA 1974). In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785 788 (Fed. Cir. 1984). Applicants have not submitted sufficient evidence to rebut the strong *prima facie* case of obviousness established by Examiner.

2. In response to applicant's argument that Logue and Moore is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both of the references relates to the field of communication in network environment. Furthermore, It is not necessary that

the prior art suggest the combination to achieve the same advantage or result discovered by applicant. See, e.g., In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of ordinary skill in the art.

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

6. With respect to applicant's remark that "although AAPA teaches communication of tasks within system firmware, AAPA clearly discusses the limitations of launching a lower priority task from a higher priority task within system firmware" (page 5 3rd paragraph), applicant to note that the examiner relies on AAPA for the teaching of communication within system firmware and not for launching a lower priority task from a higher priority task within system firmware which is not recite in the claim.

Furthermore, the examiner has interpreted the claim language as broadly as possible. It is also the examiner's position that applicant has not yet submitted claims drawn to limitations which define the method and system of applicant's disclosed invention in a manner that distinguishes over the prior art. Failure for applicant to significantly narrow definition/scope of the claims implies the applicant intends broad interpretation be given to the claims. The examiner thus maintains that previous rejections to applicant's claims with regard to the combination of Moore et al. with Logue et al. and AAPA.

7. With respect to the rejections of claims 25 - 26, the office made a typographical error in which AAPA reference was left out in the heading. However, applicant to note that it was just a typographical error because the body of the rejection clearly cited AAPA as one of the arts. Therefore, applicant is directed to the above for the similar responses.